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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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William W. Morrow.

Judge William W. Morrow, of the ninth judicial circuit, is a native of Indiana. He was born in Wayne county in that state near Milton, on July 15, 1843. The family moved to Illinois in 1845. In 1859 he went to California, which has since been his home.

Judge Morrow was admitted to the bar in California in 1869, and in 1870 he was appointed assistant United States attorney for that state, and served as such for four years. He was attorney for the state board of harbor commissioners from 1880 to 1883. He became special counsel for the United States before the French and American claims commission, and acted in that capacity from 1881 to 1883, and also was special counsel for the United States before the Alabama claims commission from 1882 to 1885. He was chairman of the Republican state central committee of California from 1879 to 1882, and was a delegate to the national Republican convention in 1884, being chairman of the California delegation therein. He was elected to the forty-ninth Congress for the San Francisco district in 1884, and was re-elected in 1886 and in 1888, but in 1890 declined a renomination. In Congress he served on the committee on commerce, immigration, foreign affairs, and appropriations. President Harrison, on September 18, 1891, appointed him United States district judge for the northern district of California, and on May 20, 1897, President McKinley appointed him United States circuit judge for the ninth judicial circuit.

In the ninth judicial circuit, with a territorial extent sufficient for an empire, the Federal court has to decide questions of great variety, covering the whole range of legal subjects from admiralty to mining, and often affecting financial interests of vast magnitude. On many of these subjects Judge Morrow has already been called to write the opinion of the court, and his opinions on all these subjects fully demonstrate his ability to deal with all the judicial problems that come before the court.

Coercion by Trade Association.

One method of ruining trade competitors has just proved unsafe in Vermont. A Green Mountain justice was sufficient for the evil. A rule of an association, enforceable by fine, prohibited any dealing by its members with persons who were not members. By its enforcement the business of a rival was deliberately ruined. In an action against the members for conspiracy they claimed that they had merely withheld their own patronage from the injured party, and that this they had a right to do. But the court, in Boutwell *v.* Maer (Vt.) 59 Atl. 233, held that the by-law, which imposed a penalty upon them for dealing with him, amounted to a system of coercion, of which they were both the authors and the victims. The fact that they voluntarily assumed the obligations of the association was held insufficient to relieve the by-law of its coercive effect. This is a new phase of the subject of trade boycotts. The effect of penalties imposed on the members of an association to make a by-law constitute an illegal

coercion of themselves does not seem to have been before considered. In McCauley v. Tierney, 19 R. I. 255, 37 L. R. A. 455, the threat by an association that its members will withdraw their patronage from a dealer if he deals with those who do not belong to their organization is held lawful, on the ground that they had a right to withdraw their patronage and might make such condition of its continuance as they chose. But that case did not involve—or at least did not discuss—the effect of a coercive by-law.

Continuing Negligence.

A new phase of the law of negligence seems to have developed recently in the doctrine of what is called "continuing negligence." It is illustrated in Greenlee v. Southern R. Co. (N. C.) 41 L. R. A. 399, and Troxler v. Southern R. Co. (N. C.) 32 S. E. 550, in which it was held that contributory negligence of a brakeman in coupling cars will not preclude a recovery for injuries caused by the absence of self-couplers because that constituted continuing negligence of the master and existed subsequently to the negligence of the brakeman. The same doctrine seems to have been acted upon, without expressly adopting it, in Thompson v. Salt Lake Rapid Transit Co. (Utah) 40 L. R. A. 172, in which it was held that defects in a street-car brake which made it impossible to stop the car quickly rendered the company liable for killing a deaf and dumb boy who was struck by the car, even if he was guilty of contributory negligence. This doctrine seems to abrogate the well-known rule of contributory negligence which charges the responsibility for an accident upon the party who had the last clear chance to avoid it. Or, at least, it makes a class of exceptions so large as to leave that rule but little effect. If the doctrine of continuing negligence is sound, it would seem to have just application in all cases in which negligence is based on defects in any machine, apparatus, tool, implement, place of work, or any other material thing. Such defect, of course, continues at the time of the injury. If contributory negligence is to be deemed immaterial in such cases, it will shrink to be a very small factor in the law of negligence.

Cigarettes Outlawed.

A Tennessee statute making any sale of cigarettes unlawful has been lately held constitutional, even as to imported cigarettes, on the ground that they are not legitimate articles of commerce, but are noxious, deleterious to health, altogether and always pernicious. This was in the case of Austin v. State (Tenn.) 48 S. W. 305. The court conceded that if cigarettes are commercial articles the state could not prevent their importation and sale in original packages; but it planted its decision squarely upon the proposition that such pernicious articles are excluded altogether from the class of commodities that may be subjects of commerce. As it was held in Leisy v. Hardin, 135 U. S. 100, that intoxicating liquors are commercial articles which a state could not exclude, the Tennessee court distinguishes that case on the ground that intoxicating liquors were there recognized as commercial articles, and quotes the words of Mr. Chief Justice Fuller, to the effect that intoxicating liquors had been recognized as commercial articles "by the usages of the commercial world, the laws of Congress, and the decisions of courts." In what way Congress had recognized intoxicating liquors as commercial articles Mr. Chief Justice Fuller did not say. In fact this congressional recognition was by the imposition of import duties and internal revenue taxes upon them and by regulation of the traffic for these purposes. It does not appear why substantially the same recognition has not been given by Congress to cigarettes, as it has imposed internal revenue taxes upon them, regulated the mode of packing them, and made express provisions with respect to imported cigarettes. In trade and commerce the public has long recognized the commercial character of cigarettes as well as other forms of tobacco and of intoxicating liquors. An immense traffic in cigarettes has been carried on lawfully for about a quarter of a century. This ought to be sufficient to establish the fact that cigarettes are commercial articles. Whatever kind of articles men traffic in freely, extensively, and for a long term of years may well claim an established position among commercial articles within the reach of the constitutional protection. Articles which are commercial in fact must be deemed commercial in law. The Tennessee court has presented the other side of this question very strongly, and any decision of that court deserves very great respect, as it is one of the very strong courts of this country. But in this matter we think the doctrine which must prevail will recognize that any commodities in

which there is an extensive traffic in the markets of the country must be recognized by the courts to be articles of commerce in law as well as in fact.

Corporation Laws.

The amazing commercial and industrial developments of the latter half of this century are best represented in the law by the growth of the law of corporations. The subject touches life at so many points that it is on its popular as well as on its legal side the most important subject in the law, except that which involves the fundamental constitutional questions. Its peculiar importance to practising lawyers is due to the great number of corporations that are doing business of all kinds, the multitude of actions brought by or against them, and the vast sums of money invested in them. A recognition of this fact is shown by the fact that on no other branch of the law is there so long a list of excellent treatises, including such admirable works as Cook on Stockholders and the Commentaries of Judge Thompson. Although the subject is essentially statutory, up to the present time the working books of the profession have been written chiefly from the standpoint of the judicial decisions. But we now have, fortunately, a work based on the statutes themselves, giving the complete text of the corporation laws of each state, and showing all that the courts have decided with respect to each section. This work (which was mentioned last month in our list of new books) has been done by Messrs. Cumming, Gilbert, and Woodward, whose valuable work of this kind upon New York laws is well known in that state. For many of the states there is no other recent compilation of such statutes, or any annotation of them. In only a few of the greatest law libraries can there be found all the corporation laws that are contained in the three volumes of this work; and even the greatest library will not furnish any other means of so quickly comparing the statutes of different states or of tracing out the decisions based upon them. For these reasons these annotated statutes are of extraordinary value to legislators and others who are working to improve the corporation laws of their own state. Their value to a lawyer who has any questions to answer concerning corporations of other states needs no comment.

The rapid formation and incorporation of great trusts has concentrated attention just now upon the laws which govern them. The interstate character of many corporations, and the rights and liabilities of stockholders of foreign companies, are constantly presenting new questions. No other branch of general or statutory law seems likely to be of equal importance during the next decade. There are many indications that the justice and public policy of some of our corporation laws are to be sharply challenged in the immediate future. Corporations are becoming so numerous and potent, the conflicting interests of shareholders and creditors are so great, and the general relation of corporations to the public welfare is so vital, that the discussion of the subject is already extending into the daily newspapers. There are some indications that the policy of such laws may become a political question; but from the evil of a partisan discussion of the subject, with all its passion and misrepresentation, let us hope to be delivered.

In the recent case of Commonwealth Mutual F. Ins. Co. *v.* Edwards (N. C.) 32 S. E. 404, Douglas, J., speaks the following wise and temperate words:

"The prevailing tendency to corporate absorption cannot be ignored, and it is the increasing duty of the state, while giving to all corporations the equal protection of its laws, to equally protect its citizens against corporate abuses. There should be no prejudice against corporations simply because they are corporations. They are not outlaws, but are the creatures of the law, and are not only capable of becoming the most powerful agencies of civilization, but have become absolutely necessary in our present stage of material development. They can be justly condemned only when their powers are abused, but, in proportion as their powers are greater than those of an individual, they are more liable to abuse, and should be more carefully guarded."

Injunction against Bogus Attorneys.

The power of a court of equity to enjoin an unlicensed person from holding himself out to the public or practising in the courts of the state as an attorney at law is asserted and exercised by Judge Tuley of Chicago in People, *ex rel.* State's Attorney, *v.* Thompson (C. Ct. Cook Co.) 31 Chicago Legal News, 261. The lack of any property right of the state in the matter is held, on the authority of *Re* Debbs, 158 U. S. 564, 39 L. ed. 1092, not to prevent the exercise of equity jurisdiction. Judge

Tuley says: "It may well be held to be the duty of the state, charged with the welfare of its whole people, to protect the general public against such enemies of society. If it cannot do so by injunction, it cannot do so at all. There is no other remedy. The statute requiring a license in order to practice as an attorney affixes no penalty for its violation, and, if it did, the remedy by penal prosecution would be almost, if not quite, useless."

The Chicago Legal News says that this decision will strike terror to the hearts of "more than 200 persons who are practising law in Chicago without any license or authority whatever."

It is refreshing to know that these illegitimate practitioners are to be expelled from the courts and deprived of the power to cheat the public. But it may be doubtful if an injunction against their unlawful practice is within the legitimate power of a court of equity. It seems certain, at least, that an injunction is not the only remedy. Imposing upon the court by representing oneself to be an attorney when he is not is certainly contempt of court and punishable as such. The inherent power of the court to punish contempt seems to furnish in itself a fairly adequate remedy for such unlawful practice.

Another remedy in those states which make, it a misdemeanor to practice law without authority is that of penal prosecution. Why this is not as adequate a remedy as an injunction is not apparent. The injunction merely adds the mandate of the court to that of the legislature, and, if disobeyed, the equity court punishes for disobedience of its decree, while the criminal court punishes for disobedience of the statute. The penal prosecution, if successful, ends in punishment by fine or imprisonment for violation of the statute. The injunction, if disobeyed, is enforced by fine or imprisonment for contempt of court. The theory that the remedy at law in such a case is inadequate seems to have no basis except the fact or belief that a chancellor is more reliable than a jury. But the uncertainty of jury trial certainly cannot be sufficient ground for chancery jurisdiction, as, if it were so, the jurisdiction of chancery would be extended to cases of every nature which are now tried in courts of law.

Judge Tuley's injunction is a most righteous one, if it is within the exercise of his jurisdiction. The doubt as to his jurisdiction is raised by the query whether or not the remedies by punishment for contempt and by penal prosecution are not adequate.

Duty of Passenger to Submit to Extortion.

The theory that submission to an extortionate demand backed by a threat of greater injury is the duty of a victim, in order to prevent the wrongdoer from executing his threat to inflict the larger damage, is a very strange one. Yet some important courts have adopted it in cases where passengers have been ejected from a train for refusal to pay fare wrongfully demanded. These courts hold that the passenger's damages are limited to the fare demanded because, by paying that, he could have prevented any greater damage. These decisions are in conflict with those of other courts, and they seem to be entirely anomalous and indefensible.

There is much apparent confusion in the conflicting decisions on this subject which is caused by failure to distinguish between the cases in which the passenger has a right to ride on the train from which he is ejected and those in which he had paid for a ride but had no right to ride on that particular train because he had failed to provide himself with a proper ticket or other evidence of his right. It does not seem unjust to hold that a passenger ought to be required to pay fare even when it is not justly due to the carrier in order to avoid unnecessary damages, if he has got upon a train knowing, or having fair opportunity to know, that he has not the proper evidence of his right to ride. In such a case his own fault or negligence may properly be held to preclude him from insisting that his own word be accepted by the conductor in respect to his right to ride. It may fairly be urged that he is not in fact entitled to ride upon that train without further payment, and therefore the demand upon him for fare is rightfully made in the exercise of the conductor's duty. In such a case it is his duty to pay the demand, not merely to keep down damages, but because, as between him and the conductor of that train, he has no right to ride without paying. But when the passenger has not been negligent, when, having paid for his ride, he has got upon a train with a ticket which he reasonably supposes and has a right to suppose to be good for his transportation, the question involved is simply the question of duty to submit to an improper and unjust de-

mand in order to keep down damages. The doctrine of a duty to minimize damages does not seem to have been carried so far in any other class of cases as to require submission to an unlawful demand in order to procure protection from threatened assault or other tort. Such an application of the doctrine also seems to conflict with well-settled principles of law. It is proper enough to require due care on the part of a person to avoid increasing his own damages, but the reason for the rule ceases when the damage to be avoided is a voluntary injury threatened by the party who claims the benefit of the doctrine. For a carrier to say to a passenger, "You must submit to extortion in order to prevent me from assaulting you, else you will be deemed in law to have caused your own damage needlessly," is equivalent to an attempt of the carrier to profit by its own wrongful threats. It amounts to a claim of exemption from liability for assault because the wrongdoer first offered his victim a choice between assault and extortion.

Compelling Municipalities to Do Justice.

The theory that municipalities are not bound by rules of justice seems to crop out frequently in the contentions of counsel and sometimes also in the opinions of the courts. The supremacy of the public welfare over the interests of the individual is, of course, the foundation of some important rules of law. Yet this principle would quickly lead to tyranny unless checked on every side by the demands of justice. The interest of the public may compel the surrender by a citizen of his home through the exercise of eminent domain, but the interest of the individual is guarded to the fullest extent possible consistent with the interests of the public. He must yield his property; but he must have "just compensation." Constitutional guaranties of equal protection, equal privileges and immunities, just compensation, and due process of law, are sufficient, if properly interpreted, to give substantial protection to individuals in nearly all cases. The courts, indeed, must recognize that ideal justice is not always obtainable; but they ought always to insist that any rule which they sanction must be a just rule, even if, through the imperfection of human judgment, it may be misapplied.

The most glaring instances of municipal injustice which have ever been sanctioned by the courts have been in the matter of special assessments for public improvements when these were not based on equivalent special benefits. The death knell of that injustice seems to have been sounded by the decision in Norwood *v.* Baker, 172 U. S. 269. A very healthy rule of justice has also been laid down in the recent case of McConville *v.* St. Paul (Minn.) 77 N. W. 993, in which money paid under compulsion by an abutting owner for a street assessment was held to be recoverable by him in an action against the city, when the city had failed to make and had definitely abandoned that part of the improvement which would be beneficial to him. In such case the entire consideration of the assessment fails, and the retention of the money by the city would be plain injustice. Such decisions get down to foundation principles, which courts sometimes fail to reach. It may sometimes impose a considerable burden upon a municipality to do justice in matters of this kind. But that burden will be slight compared with the evil which any government by the people must sustain by a deliberate abandonment of justice.

Advertising His Shame.

The most remarkable modern instance of advertising one's own stultification appeared in a recent issue of a Chicago daily. In discussing the policy of a law to require signed editorials, the writer says:

"So far as editorials are concerned, it is as futile as it is unfair to hold the writers responsible for the opinions expressed in them. The policy of a paper is determined by the owner, and he virtually dictates every utterance published editorially. As well call upon a typewriter to assume liability for the words and sentiments dictated by the real author! The writer of an editorial, any more than the compositor who puts it in type, does not necessarily believe in the ideas he is made to express; indeed, very frequently he holds views diametrically opposite to those of his chief, whose orders he obeys and whose opinions he is bound to advocate loyally and consistently. The hand is that of the writer; the voice that of the proprietor."

Since this editor deliberately professes himself to be a mere puppet of the proprietor, we have no reason to suppose that he really holds any such views as he expresses, or that he did not write this particular editorial under compulsion because ordered to do so by the owner of the paper. Editors in this state of intellectual and moral degradation ought to form a

secret society to be known as "The White Slaves."

A greedy and unprincipled man owning a great newspaper, if he also owns the brains and consciences of his editors, is likely to be a breeder of pestilence. The position of a newspaper proprietor is not different, except in degree of responsibility, from that of any other business man. He ought, of course, to conduct his business as a financial success; but he ought to do it with full appreciation of his responsibility as a citizen for the preservation and advancement of the public welfare. His obligation is greater than that of other men only as his opportunity and power are greater.

A high tone of intellectual and moral leadership and of statesmanlike responsibility is maintained by some of the proprietors of the press. But another portion regards anything as legitimate that can be turned into money. Some whiningly apologize for the degradation of their columns by saying, in chorus with every other panderer to vice, that they must give what the public demands. An editor whose brain is marketable in aid of any cause, great or small, that may promise profit to such a venal proprietor, is more pitifully degraded than a runner-in for saloons or a hired decoy for gamblers. If the editorial position in modern journalism is correctly defined by this Chicago newspaper, it will not be long before the public understand it, and such an editor will be looked upon as an intellectual parasite and a moral eunuch.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 42, Part 6, and Book 43, Part 1.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Bills and Notes.

The sufficiency of presentment and demand of payment made on a receiver *pendente lite* of an insolvent bank, and of notice of nonpayment by him, to bind an indorser of a negotiable certificate of deposit issued by the bank before its insolvency, is denied in Jackson v. McInnis (Or.) 43 L. R. A. 128.

Carriers.

The distinction between common carriers and ordinary employers in respect to liability for malicious assaults made by employees is sharply presented in the case of Haver *v.* Central R. Co. (N. J.) 43 L. R. A. 84, holding that for an assault upon a passenger the carrier is liable.

One who gets upon a train with a ticket which he knows does not, upon its face, entitle him to passage, because the time for which it purports to be valid has expired, is held, in Trezona *v.* Chicago Great Western R. Co. (Iowa) 43 L. R. A. 136, to have no right to recover damages for being ejected, if he refuses to pay fare, although he thinks the time limitation is unreasonable.

But the limitation of a general ticket for passage on a railroad to the day on which it is sold is held, in Louisville & N. R. Co. *v.* Turner (Tenn.) 43 L. R. A. 140, to be invalid, unless there is an express contract to that effect, based upon a consideration, or an alternative given to the purchaser to have a full and unlimited ticket.

Conflict of Laws.

The enforceability of a stockholder's liability in a jurisdiction outside of that in which the corporation was created is sustained in Bell *v.* Farwell (Ill.) 42 L. R. A. 804, in case of a Kansas corporation, on the ground that the stockholder's liability under Kansas law is not penal, but contractual.

Constitutional Law.

The constitutional provision against *ex post facto* laws is held, in Murphy *v.* Com. (Mass.) 43 L. R. A. 154, to condemn a statute which alters or may alter in a substantial manner the position of those who committed offenses before its passage, even if in a particular case it might operate more beneficially than the prior law would have done. And this rule is applied where a statute changed the provision as to deductions for good conduct and permits to be at liberty.

Contracts.

A contract to sell the bid or interest of a successful bidder at a judicial sale before it is confirmed, for more than the amount bid, is held, in Camp *v.* Bruce (Va.) 43 L. R. A. 146, to be contrary to public policy, unless the advance on the bid inures to the benefit of the parties to the suit.

Corporations.

The right to use the name of a corporation is held, in Armington *v.* Palmer (R. I.) 43 L. R. A. 95, to be distinct from the right to use the name of articles manufactured by it, and not to pass with the latter on a purchase of the plant, machinery, stock, and visible property of the company.

Criminal Law.

In determining whether or not a person is an habitual criminal under a statute making him such after two former imprisonments for felony, it is held, in State *v.* Martin (Ohio) 43 L. R. A. 94, that imprisonment terminated by unconditional pardon cannot be counted.

Curative Acts.

An expository statute which declares that premiums, fines, or stock taken to represent premiums for loans made by any building and loan association shall not be treated as interest, but shall be collected as debts, is held, in Lindsay *v.* United States Savings & L. Co. (Ala.) 42 L. R. A. 783, to be invalid as applied to past transactions which were usurious under the construction given by the courts to previous laws.

Evidence.

The evidence of expert witnesses as to the value of services is held, in Hull *v.* St. Louis (Mo.) 42 L. R. A. 753, to be merely advisory, to be given by the jury such weight as they deem it entitled to, or to be altogether disregarded by them, if, from all the facts and circumstances in evidence, they believe the testimony of the experts to be unreasonable.

Gift.

A promissory note given by the maker to the payee, who is a relative, to enable the latter to cease work, though it may be without consideration and subject to repudiation at first, is held, in Ricketts *v.* Scothorn (Neb.) 42 L. R. A. 794, to be valid and enforceable, when the payee, in reliance upon it, has surrendered a lucrative position.

The general rule that a note which amounts

to a mere gift is invalid for want of consideration, but is enforceable after money has been expended or liabilities incurred in reliance upon it, is applied in Miller v. Western College of Toledo (Ill.) 42 L. R. A. 797, in case of a promissory note given to a college.

Hacks.

The disputed question of the right of a railroad company to give one hackman an exclusive privilege of soliciting passengers within its station grounds is answered in State v. Reed (Miss.) 43 L. R. A. 134, in the negative, after reviewing the other decisions.

Homicide.

On the theory that the law accepts human nature as God has made it, it is boldly declared in State v. Grugin (Mo.) 42 L. R. A. 774, notwithstanding many judicial declarations, that words, however opprobrious, constitute no provocation in law, that foul and opprobrious words may be sufficient to reduce a homicide to manslaughter if they are of a character to so excite the passions of the mass of men as to enthrall their reason. This doctrine was applied in favor of a man who slew the ravisher of his daughter, who, when asked about it, declared, "I will do as I damn please about it."

Husband and Wife.

The right of a married woman to maintain an action in her own name to recover damages for the alienation of her husband's affections is sustained in Beach v. Brown (Wash.) 43 L. R. A. 114, under statutes abolishing disabilities of married women, and it is also held that procuring a divorce will not preclude the action.

Intoxicating Liquors.

The loss of money taken from the owner's pockets while he was intoxicated is held, in Gage v. Harvey (Ark.) 43 L. R. A. 143, not to be included in the damages occasioned by the sale of liquor to him, under a civil damage law, since the sale of the liquor was not the proximate cause of the loss, but this was due to the intervening wrongful act of a third person.

Injunction.

The right of a municipality to an injunction against improvements by abutting owners upon streets in a manner materially different from that directed by the board of trustees is sustained in Drew v. Geneva (Ind.) 42 L. R. A. 814, where the abutting owner was acting in defiance of a municipal ordinance.

Landlord and Tenant.

Damage done by water from an upper tenement owned and occupied by the lessor, where, because of defective plumbing, it runs down and injures the goods of a lessee on a lower floor, is held, in York v. Steward (Mont.) 43 L. R. A. 125, to constitute a breach of an implied covenant for quiet enjoyment, in the absence of excusing facts, and when the lessor had refused, after reasonable notice, to remedy the defects in the plumbing, which caused the damage.

Levy and Seizure.

A sheriff levying on a growing crop of peaches and failing to gather them, or permit the owner to do so, until they have become rotten and worthless, is held, in State, Wilson, v. Fowler (Md.) 42 L. R. A. 849, to act in so doing as an officer, and thereby to create a liability on his official bond.

Mandamus.

An action of mandamus to compel the reinstatement of a pupil in a school is held proper in Jackson v. State, Majors (Neb.) 42 L. R. A. 792, if the action of the officer or officers by which the pupil was refused admission to or continuance in the school was an arbitrary or capricious exercise of authority.

Municipal Corporations.

The power of a municipality to collect a tax upon property or business so situated that it cannot receive any protection or benefit from it is denied in Kaysville v. Ellison (Utah) 43 L. R. A. 81, where a city undertook to compel a merchant to obtain a license for doing business at a little place about two miles out of the city, though within its territory, but which received no police protection from the city.

Negligence.

The humane doctrine that one who voluntarily interposes to save the lives of persons imperiled by the negligence of another is not debarred, on the ground of contributory negligence, from recovering for injuries, is adopted in Maryland Steel Co. v. Marney (Md.) 42 L. R. A. 842, and it is held that the proximate cause of the injury is the negligence which created the peril.

The negligence of parents, though not imputed to a minor child who is injured in consequence of the negligence of a third person, is held, in Ploof v. Burlington Traction Co. (Vt.) 43 L. R. A. 108, to preclude the parents themselves from recovering for the loss of the child in such case, under a statute which gives a right of action to the personal representative of the child for the benefit of the next of kin.

The serious conflict of authority on the duty of landowners to keep premises safe is considered in Ritz v. Wheeling (W. Va.) 43 L. R. A. 148, in which it is held that there is no such duty toward trespassers even if they are children, and that negligence to create a right of action in their favor must be so gross as to amount to a wanton injury.

Payment.

An important limitation on the doctrine that death of the principal revokes an agency is shown in Deweese v. Muff (Neb.) 42 L. R. A. 789, in which it is held that payment of a negotiable note indorsed by the payee in blank, if made to the payee's agent who is in possession of the note, will discharge the maker, although the payment was made after the death of the principal, but without notice of his death.

Public Improvements.

Assessments upon abutting owners for new sidewalks and drains, which become necessary only because of a change of the grade of a street, are held, in Mauldin v. Greenville (S. C.) 43 L. R. A. 101, to be unconstitutional, where the Constitution requires the whole property of the municipality to be taxed for any public or corporate purpose.

Schools.

The right of women to vote at school elections in Illinois is held, in Dorsey v. Brigham (Ill.) 42 L. R. A. 809, to be limited to women who are citizens. A foreign-born woman whose husband has filed a declaration of intention, but has not yet become a citizen, is denied the right to vote.

Taxes.

The first attempt to subject life insurance policies to taxation was defeated in State Board of Tax Commissioners v. Holliday (Ind.) 42 L. R. A. 826, where paid-up or nonforfeitable and partly paid-up life insurance policies were assessed, but the court held that the existing statutes, though providing for the taxation of all property not expressly exempted, did not provide any special regulations for the valuation of this peculiar kind of property.

The exemption of the shares of stock of an incorporated company in the hands of stockholders from any tax or impost whatsoever is held, in Hancock v. State, Singer Mfg. Co. (N. J.) 42 L. R. A. 852, to constitute an exemption of the capital stock of the company.

Trademarks.

The increasing recognition of the rights of labor unions to labels or trademarks is illustrated in Schmalz v. Woolley (N. J.) 43 L. R. A. 86, holding that a workman or a number of workmen banded together may, on general principles, acquire a right of property in a trademark, and that a statute providing for the adoption of labels, trademarks, etc., by labor unions is constitutional.

Trial.

The right of a state under the Federal Constitution to provide for a jury of less than twelve men is sustained in State v. Bates (Utah) 43 L. R. A. 33, in which the provision of the state Constitution for a jury of eight was sustained. This case also held that such a provision was not *ex post facto* as applied to prior offenses, but on this point it has been overruled by the United States Supreme Court in Thompson v. Utah, 170 U. S. 343, 42 L. ed. 1061.

Voters and Elections.

Requiring a pledge from those who sign nomination papers to support and vote for the candidate or candidates whose nominations

are therein requested, is held, in State, Plimmer, v. Poston (Ohio) 43 L. R. A. 90, to be reasonable and valid, and not to constitute an unreasonable impediment to the exercise of the elective franchise.

Waters.

Percolating water is held, in Wheelock v. Jacobs (Vt.) 43 L. R. A. 105, to be as much a part of the earth as the soil and the stones, and not to be subject to the doctrine of prescription. It is also held that a grant of a spring does not, by implication, convey percolating water before it reaches the spring. Water running through a fissure or hole in bed rock below the surface, but not flowing in a well defined channel underground, is deemed percolating water.

The liability of a water company for the dissemination of disease by an impure water supply is denied in Green v. Ashland Water Co. (Wis.) 43 L. R. A. 117, unless the water company knows, or from the situation ought to know, that the water is dangerous for domestic use from some cause not discoverable ordinarily by the use of reasonable care, and fails to give the consumers notice of such danger. A consumer who knows, or ought to know, of the dangerous condition of the water when he uses it, is held to have no remedy against the company.

The right of a prior appropriator of water to enter on lands across which his ditch runs, in order to clean and repair the ditch, is sustained in Carson v. Gentner (Or.) 43 L. R. A. 130, where the land was patented after his ditch was made.

Recent Articles in Law Journals and Reviews.

"Payment of Negotiable Paper under a Mistake of Fact."—5 Western Reserve Law Journal, 1.

"Third Person's Right to Sue on Contract."—2 Law Notes (Am.) 225.

"A few Facts on Survivorship."—59 Albany Law Journal, 260.

"The Rise of Federal Judicial Supremacy in the United States."—37 American Law Register, N. S. 621, 688.

"Forgery by Means of a Rubber Stamp."—37 American Law Register, N. S. 745.

"Experts and Their Testimony."—37 American Law Register, N. S. 735.

"Government Control of Transportation Charges." Part I.—37 American Law Register, N. S. 721.

"Rights and Duties of Belligerents and Neutrals from the American Point of View.'—37 American Law Register, N. S. 657.

"Recent Decisions of the Various Courts of Last Resort."—7 American Lawyer, 105.

"President's Annual Address to the Kansas State Bar Association."—7 American Lawyer, 97.

"Medical Expert Testimony."—7 American Lawyer, 92.

"The Relation of the Lawyer to Society."—5 Western Reserve Law Journal, 42.

"All Laws of a General Nature shall Have a Uniform Operation throughout the State."—5 Western Reserve Law Journal, 31.

"Citizenship and the Age of Maturity."—59 Albany Law Journal, 228.

"No One shall be Compelled in Any Criminal Case to be a Witness against Himself."—38 American Law Register, N. S. 78.

"An Inquiry into the Nature and Law of Corporations." Part II.—38 American Law Register, N. S. 65.

"Has Malice Any Place in Civil Wrongs."—19 Canadian Law Times, 53.

"The Doctrine of Ultra Vires as Affecting the Rights and Obligations of a Corporation under a Contract to Which it is a Party, when the Contract has been Executed by One Party, but is Executory as to the Other."—48 Central Law Journal, 231.

"Colonial Expulsion of Aliens; An Answer."—33 American Law Review, 246.

"Confiscation by Assessments."—33 American Law Review, 242.

"Can Husband and Wife be Partners?"—33 American Law Review, 215.

"Expansion and the Constitution."—33 American Law Review, 202.

"Some Phases of Interstate Commerce."—33 American Law Review, 188.

"Our Right to Acquire and Hold Foreign Territory."—33 American Law Review, 161.

"Capital Punishment."—59 Albany Law Journal, 232, 240, 256, 286, 303.

New Books.

"Digest of Bankruptcy Decisions." By E. C. Brandenburg (L. C. P. Co., Rochester, N. Y.) 1 Vol. $6.50.

"Finch's Annual Insurance Digest." Vol. 11. (Bowen-Merrill Co., Indianapolis, Ind.) $3.

"Practice and Procedure of United States Supreme Court." By Heber J. May (John Byrne & Co., Washington, D. C.) 1 Vol. $6.

"Law of Mortgages in Canada." By Edwin Bell and Herbert L. Dunn. (Canada Law Journal Co., Toronto, Can.) 1 Vol. $6.50.

"Law of Personal Injuries in Illinois." By David J. Corbin (Callaghan & Co., Chicago, Ill.) 1 Vol. $5.

"Poor Laws of Pennsylvania." By Calvin G. Beitel (T. & J. W. Johnson & Co., Philadelphia, Pa.) 1 Vol. $6.

"Revised and Annotated Edition of South Dakota Statutes." By Edwin L. Grantham (E. B. Myers & Co., Chicago, Ill.) 2 Vols. $15. In 3 Vols., $16.50.

"Canadian Criminal Cases, Annotated." (Canada Law Journal Co.) Vol. 1. $6.50.

"Charter of San Francisco." Annotated by Edward F. Treadwell. (Bancroft-Whitney Co., San Francisco, Cal.) 1 Vol. $4.

"Code Scolaire de la Province de Quebec, Annoté." Par Paul de Caze. (C. Theoret, Montreal, Can.) 1 Vol. $1.25.

"The Education Act of Quebec, Annotated." By R. Stanley Weir (C. Theoret, Montreal, Can.) 1 Vol. $1.75.

The Humorous Side.

IT TAKES TWO.—In a recent divorce case in Missouri a husband complains that his wife has continuously "quarreled at" him.

BLAMING THE STENOGRAPHER. — "This statement," says a late opinion, "is a summary of 667 large typewritten pages of what is called 'evidence,' but which, for the most part, is simply 'gabble, gabble, gabble;' thus furnishing a fine illustration of what a curse the art of the stenographer is to the appellate courts."

SAW NOT THE APPLICATION OF THE SAW. —A certain court which presumably knows all about the difference between spades and clubs lately seemed oblivious to the distinction between spades and shovels. An attorney claimed that an indictment for striking a person with a spade was not supported by proof of striking with a shovel. But the court thought it was all the same, and held the variance immaterial. This seems to dull the edge of the old saw that a spade should be called a spade.

SPOKE WELL OF THE WITNESS.—Referring to a photograph as a deposition of the "unimpeachable sun," a Missouri judge says: "To me it is a very comforting thought and pleasing reflection that amid all the vicissitudes and pressing exigencies of railroad damage suits they have never yet attempted to impeach 'Old Sol.' Perhaps they were deterred by his shining reputation. At any rate, from his serene seat in the heavens, 'from his cairn on high,' he still looks down upon the pigmy populations of earth with the same burning eye wherewithal erstwhile he gazed down upon Ananias that time he went in before the apostles, and 'lied to the Holy Ghost.'"

A FAIR JURY.—In a suit between father and son before a Hoosier J. P. the sextette comprising the jury came in after three hours' deliberation, with the following impartial verdict: "We the jury agree to find judgment for neither plaintiff nor defendant, and find that each pay half the costs." It is said the verdict struck everyone as being unusually fair, that even the parties to the action were satisfied.

WANTED A CHIP OFF THE OLD BLOCK.—The attorney for the plaintiff in an action for killing a dog said: "Gentlemen of the Jury, he was a good dog, a fine-appearing dog, a valuable dog, and it does not lie in the mouth of the defendant to say he was a worthless cur, because it is in evidence before you that on one occasion he offered $5.00 for one of his pups."

SOME ARE BORN SO.—The trouble with some corporations is described in a late case as follows: "Some are afflicted with what may be called 'congenital' insolvency. They are born insolvent, capitalized into insolvency at the moment of their creation, and eke out a precarious existence in an apparent effort to solve the old paradox of living on the interest of their debts."

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